

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10709 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ISMAIL MOHMAD MIYANA

Versus

DISTRICT MAGISTRATE

Appearance:

MS BANNA DUTTA for Petitioner

MR HH PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/01/2001

ORAL JUDGEMENT

#. The petitioner is detained as a bootlegger. Challenging the order of detention, learned counsel for the petitioner raised manifold contentions but as this petition deserves to be allowed only on one ground, it is not necessary to refer, discuss and decide on all other contentions.

#. In para-23 of the special civil application, the

petitioner made a grievance that despite of demand made, the respondents have not given copy of the report of Forensic Science Laboratory in cases registered against him, statements of witnesses recorded u/s.161 of Cr.P.C., and legible documents.

#. Reply to the special civil application has not been filed by any of the respondents. This position is not disputed by the learned counsel for the respondents and as such the averments made in para-23 of the special civil application stand uncontroverted. Otherwise also, Shri H.H. Patel very fairly concedes that the documents i.e. the report of the Forensic Science Laboratory, and statements recorded of the witnesses under sec. 161 of Cr.P.C. were not given to the petitioner. In view of the aforesaid facts and consent made by the learned counsel for the respondents, it is a clear case where the petitioner has been denied of his right of making effective representation against the detention order as conferred upon him under Article 22(5) of the Constitution of India.

#. In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 18-9-2000 is quashed and set aside. The petitioner Ismail Mohmad Miyana, detenue, at present in Surat District Jail at Surat be set free forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

zgs/-